of opinion is against the above decision. *Powell v. D. S. & G. R. Ry. Co.*, 16 Or. 33; contra, *Coale v. Hannibal & St. Joseph Ry Co.*, 60 Mo. 227. In general, the courts hold that an action on the case may be maintained either against the tenant who suffered the waste or the stranger who committed it. *Parrott v. Barney*, Fed. Cas. No. 10,773a. The courts that hold the lessee responsble hold him so for all injuries done during his term, with the exception of the acts of God or of public enemies and the acts of the lessor himself. *White v. Wagner*, 7 Am. Dec. 674 (Md.); 1 Wash. *Real Property*, § 34, 35. This liability rests upon the principles of public policy. *Wood v. Griffin*, 46 N. H. 230; *Randall v. Cleaveland*, 6 Conn. 328.

MASTER AND SERVANT—LIABILITIES FOR INJURIES TO THIRD PERSONS—ACTS OF SERVANT.—CUNNINGHAM V. CASTLE, 111 N. Y. SUPP. 1057.—Where, in an action for injuries through being struck by an automobile owned by the defendant and operated by his chauffeur, it appeared that the chauffeur was using the machine at the time of the accident for his own purposes, it was *held*, that defendant was not liable. Houghton, McLaughlin, J. J., *dissenting*.

The general rule of law that one person receiving an injury by the negligence of another, must look for his remedy to him by whose negligance the injury was occasioned, is subject to the exception, that if the negligent person is a servant acting within the scope of his master's business, the person sustaining the injury can hold the master responsible. *Chcago, Ry. Co. v. West*, 125 Ill. 320; *Ochsenbein v. Shapley*, 85 N. Y. 214. But the test of the master's liability in these cases is not whether a given act was done during the existence of the servant's employment, it is whether such act was done by the servant while engaged in the service of, and while acting for the master in the prosecution of the master's business. *Lima Ry. Co. v. Little*, 67 Ohio St. 91; *Brown v. Jarvis*, 166 Mass. 75.

RAILWAYS—ACCIDENTS AT CROSSING—EVIDENCE—ADMISSIBILITY—PRIOR SIMILAR OCCURRENCE.—WOODWORTH V. DETROIT UNITED RY., 116 N. W. 549 (MICH.).—*Held*, that where the decedent's wagon caught between rail of the track and the planking of a diagonal crossing so that a car ran into it, evidence that other rigs had been struck at the same crossing from the same cause within two years is admissible, notwithstanding the defendant admitted full knowledge of the condition of the crossing for six months previous to the accident in question, for it was proper to show negligence in view of the danger.

Testimony may be given by witnesses familiar with the place of the accident as to narrow escapes they have had at the same crossing, for the purpose of showing the nature of the crossing. *Chi. & N. W. Ry. Co. v. Netolicky*, 67 Fed. 665. But in *Menard v. Bos. & Me. Rd. Co.*, 150 Mass. 386 evidence offered to show that other accidents had occurred at same crossing within a short time were not admissible. And evidence of similar occurrences on other occasions is not admissible to raise a presumption that the place where the accident occurred was defective or dangerous. *The Clev., Col., Cin. & Indianapolis Ry. Co. v. Walnut*, 114 Ind. 527; *Tiffin v. St. Louis, I. M. & S. Ry. Co.*, 93 S. W. 564 (Ark.). So, in an action for injuries received at a crossing, it is not competent for a witness to testify as to the occurrence of an

accident to himself at the same crossing several years before, as such testimony, though tending to prove that the crossing was dangerous, would not tend to prove negligence of the railway company, which could be predicated only by the manner in which the train was run across the crossing. *Cohn v. N. Y. Cent. & H. R. R. Co.*, 36 N. Y. Supp. 986.

SPECIFIC PERFORMANCE—PURCHASE OF REALTY—DEFECT OF TITLE.—BODCAW LUMBER CO. V. WHITE, 46 So. 782 (LA.).—*Held*, that in an action for specific performance, to the end of compelling a buyer to accept title, the court declines to grant the relief asked on the ground that the title tendered is suggestive of future litigation.

Formerly a court of equity would not refuse a decree for specific performance on the ground that the title was doubtful and liable to attack, where the court itself entertained a favorable opinion. But it is now an invariable rule that a purchaser shall not be compelled to accept a doubtful title. *Bispham's Principles of Equity*, § 378 (7th Ed.). While the general principle is settled, courts have not given a uniform meaning to the word "doubtful." It has been said that the title, like Caesar's wife, ought to be free from suspicion. *Sug. V. and P.* 577 (8th Am. Ed.); but in *Kullman v. Cox*, 167 N. Y. 411, specific performance was decreed although three of seven judges thought the title doubtful. In England, *Pyrke v. Waddingham*, 10 Hare 1, has defined a doubtful title as one which may be reasonably questioned by competent persons although the court entertains a favorable opinion. And this is the usual statement of the rule although the Vice Chancellor in *Rogers v. Waterhouse*, 4 Dreed 329, says that the opinion of the court in favor of the title must be so clear that it cannot be apprehended that another judge may form a different opinion. And see *Chauncey v. Leominister*, 172 Mass., 340, which seems to regard the mere possibility of an adverse claim sufficient to render a title doubtful. It has been said that if the doubts are upon a question connected with the general law, the court is to judge whether the general law is or is not settled, if the doubts arise upon the construction of a particular instrument, the court will not resolve the doubt, but will refuse specific performance. *Pyrke v. Waddingham, supra.* Followed by *Alexander v. Mills*, 6 Ch. 124, holding that the court is bound to say one way or the other what is the general law, including the construction of an Act of Parliament. But this has been qualified by *In re Thackway*, 40 Ch. D. 34, which declared that it must appear that even as to construction of general law, there are no decisions or dicta of weight which show that another judge might come to a different conclusion. And this view is ably supported in a well-considered opinion in *Lippincott v. Wikoff*, 54 N. J. Eq. 107.